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628285—45——1

In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 575

COLORADO-WYOMING GAS COMPANY, A CORPORATION, PETITIONER,

v.

FEDERAL POWER COMMISSION; COLORADO INTERSTATE GAS COMPANY, A CORPORATION; CITY AND COUNTY OF DENVER, COLORADO; PUBLIC SERVICE COMMISSION OF WYOMING; PUBLIC SERVICE COMPANY OF COLORADO; AND CANADIAN RIVER GAS COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE FEDERAL POWER COMMISSION AND PUBLIC SERVICE COMMISSION OF WYOMING

OPINIONS BELOW

The opinion and orders of the Federal Power Commission (R. I, 45–97) are reported in 43 P. U. R. (N. S.) 205. The opinion of the circuit court of appeals (R. II, 1092–1120) is reported in 142 F. (2d) 943.

JURISDICTION

The judgment of the circuit court of appeals was entered on July 8, 1944 (R. II, 1120). A petition for rehearing (R. II, 1123–1160) was denied on August 9, 1944 (R. II, 1161). The petition for a writ of certiorari was filed on October 10, 1944. A writ of certiorari was granted on November 13, 1944, limited to Question No. 7 presented in the petition. Jurisdiction of this Court rests upon Section 19 (b) of the Natural Gas Act, and Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

The question as to which a writ of certiorari was granted, as stated in the petition, is as follows:

> 7. The opinion and order of the Commission approved by the Court of Appeals, under the subject title of "Allocation of Cost of Service," is predicated upon the following assumptions and conclusions, to-wit:
>
> (1) It is assumed that the property of this petitioner and the properties of Colorado Interstate Gas Company and Canadian River Gas Company, admittedly separate and independent for all other purposes in all respects, including rate making, nevertheless properly may be "integrated" as a single system for purposes of allocation required in this case (R. V. 1, p. 79).

(2) The Commission "Allocation of Costs," approved by the Court of Appeals, is not based in whole or in part upon the peak-day deliveries or other operations of this petitioner, but is predicated upon the peak-day deliveries and operations of Colorado Interstate Gas Company (R. V. 3, Ex. 226, Table 2, Line 28, Cols. 7, 8, 9; R. V. 1, pp. 186, 358; R. V. 2, pp. 728–732, 561–562).

(3) The inaccuracy manifest in the record as to the asserted factual basis adopted by the Commission for its conclusions of "allocation of cost of service" is ignored by both the Commission and the Court of Appeals. Such alleged basic facts are grossly inaccurate, and admittedly merely averages, estimates and guesses (R. V. 2, pp. 728–732, 735–744, 746–748, 751–754, 756–758, 762, 764–765).

(4) The Commission "Allocation of Cost of Service," approved by the Court of Appeals, *admittedly does not involve and is not predicated upon any allocation of property whatever* as between property and operations subject to the rate-regulatory authority of the Commission in this case and property and operations not subject to that authority in this case, nor does it give consideration to the *actual* operating conditions of petitioner's system including priority of domestic service over industrial service of gas (R. V. 1, p. 80; R. V. 2, pp. 561–562, 730–731, 786–789).

(5) It is assumed by the Commission "All that can be accomplished by an allocation of physical properties can be attained by allocating costs including the return" (R. V. 1, p. 80) and adopted by the Court of Appeals in the following language: "The Commission further stated that it did not follow from that obligation (i. e., "allocation of the property used in regulated business from that used in unregulated business") that an allocation of physical property or portions thereof must be made before any excessive returns were determined. * * * The separation or allocation may be effected by application of any formula which makes the principle a working one suitably adapted to the particular circumstances" (R. V. 2, pp. 1112–1113).

The question presented then is: Whether the allocation of cost of service, so-called, adopted in this case is without support in the record and contrary to law.

STATUTE INVOLVED

The applicable portions of the Natural Gas Act are set forth in Appendix A, *infra*.

STATEMENT

The order here under review, reducing the interstate wholesale rates of petitioner, Colorado-Wyoming Gas Company, was entered in a consolidated proceeding which also involved the interstate wholesale rates of Colorado Interstate Gas Company ("Colorado Company"), from which

petitioner purchases approximately 98% of its gas requirements (R. I, 94),[1] and the interstate wholesale rates of Canadian River Gas Company ("Canadian Company"), from which Colorado Company, in turn, obtains such gas. The gas purchased by petitioner from the Colorado Company originates in the Panhandle field in Texas and flows, through the interconnected pipe line of the Canadian Company and Colorado Company, from Texas, through New Mexico, to a point near Littleton, Colorado. There the gas flows without interruption into the main pipe line of petitioner which runs approximately 114 miles to Cheyenne, Wyoming, where petitioner sells for resale to the Cheyenne Light, Fuel and Power Company. Petitioner's facilities also include compressor stations and a number of laterals through which sales are made in Colorado for resale. Sales are also made directly to industrial consumers in Colorado and, in small quantities, to two United States Army posts. (R. I, 47–50, 94.)

On January 9, 1939, the Public Service Commission of Wyoming filed a complaint against Colorado Company, Canadian Company, and petitioner, alleging that the rates charged by petitioner for gas sold to its affiliate, Cheyenne Light,

[1] Petitioner obtains some 2% of its gas from a local source in Colorado, but this is, in substance, an exchange arrangement as to which the Commission assumed that costs equal revenues (R. I, 83).

Fuel and Power Company, for resale in Cheyenne, Wyoming, were unjust, unreasonable, and unduly discriminatory (R. I, 29–31). A similar complaint against Colorado Company and Canadian Company had been filed by the City and County of Denver, Colorado, on December 22, 1938, in respect of the rates charged by Colorado Company for gas sold to Public Service Company of Colorado for resale in Denver (R. I, 42). The Federal Power Commission, on March 14, 1939, instituted an investigation, on its own motion, of all the interstate wholesale rates of Colorado Company, Canadian Company, and petitioner (R. I, 38–41).

The investigation and hearings on the complaints were consolidated by the Commission, and hearings were begun on October 28, 1940, and held on 102 days (R. I, 46). After submission of briefs, the Commission, on March 18, 1942, issued its opinion and orders finding that the interstate wholesale rates of Canadian Company, Colorado Company, and petitioner were excessive (R. I, 45–97). The first order required Canadian Company to reduce its rates by $561,000 per year (R. I, 87–90). The second order required Colorado Company to reduce its interstate wholesale rates by $2,065,000 per year, which amount was represented in part by the ordered reduction in Canadian Company's rates to Colorado Company (R.

I, 90–94).[2] In promulgating the third order, the one here under review, the Commission found that petitioner's revenues were $159,000 in excess of costs and a fair return, and that $119,000 of such excess was allocable to petitioner's sales for resale. Petitioner was accordingly directed to reduce its wholesale rates by $119,000 (R. I, 94–97). Since the Commission had ordered Colorado Company to reduce its rates to petitioner by $98,000 per year, the net decrease in the revenues of petitioner will not exceed $21,000 (R. I, 83).

In requiring petitioner to reduce its interstate wholesale rates by $119,000 annually, the Commission found the actual legitimate cost of petitioner's plant on December 31, 1939, to be $1,678,878 (R. I, 95). From this amount the Commission deducted $395,944 for accrued depreciation and $12,183 for contributions in aid of construction; it added $16,235 for working capital and $78,813 covering gross plant additions to December 31, 1941. This resulted in a rate base of $1,365,799 which was rounded to $1,366,000. (R. I, 95.)

The Commission allowed a 6½% return on petitioner's rate base, which return it found to be "fair and reasonable" (R. I, 95). It adjusted petitioner's cost of purchased gas to reflect the $98,000 annual reduction in Colorado Company's rates

[2] These orders are now under review in Nos. 379 and 380, this Term.

to petitioner, and, with certain minor exceptions, allowed all necessary operating expenses, including taxes, shown by petitioner's books for the test year 1939 (R. I, 95). The Commission also allowed an amount to amortize rate case expenses over a five-year period (R. I, 95).

In arriving at the amount of the reduction in petitioner's interstate wholesale rates, the Commission made an allocation of petitioner's cost of service including in such cost the fair return on the rate base, and determined the excess of revenues over costs for direct sales and for interstate sales for resale (R. I, 82–85, 96).

The petitioner's application for a rehearing and stay of the Commission's order (R. I, 97) was denied by supplemental opinion and order of May 13, 1942 (R. I, 98–103). On review the court below affirmed the Commission's order (R. II, 1092–1120).

SUMMARY OF ARGUMENT

In determining the amount of the reduction in petitioner's interstate wholesale rates, the Commission made an appropriate allocation of the cost of service between petitioner's regulable and nonregulable sales. The Commission was not required, under the Constitution, the Act or the prior decisions of this Court, to take the preliminary step of first allocating the physical properties. Use of the established "commodity-demand" method of allocation represented a reasonable exercise of the

Commission's administrative discretion in the circumstances.

ARGUMENT

In objecting to the Commission's allocation of cost of service between its regulable and non-regulable sales, petitioner contends that the Commission was required "as a matter of law" to make an allocation of its physical properties (Pet. Br. 30–34) and that the allocation which the Commission made is not supported by and is contrary to the evidence (Pet. Br. 13, 34–45).[3] We submit

[3] Petitioner again advances the contention (Pet. Br. 24) that while its sales of natural gas at the "city gate" of Cheyenne, Wyoming, for resale in that city, are subject to the Commission's jurisdiction under the Act, its sales at various "city gates" in the State of Colorado are not "in interstate commerce" and are therefore beyond the Commission's jurisdiction. In granting certiorari in this case, this Court did not grant review of this question, which was Question No. 1 in the petition (p. 2). In any event, as pointed out in our brief in opposition (pp. 7–8), under the decision of this Court in *Illinois Natural Gas Company* v. *Central Illinois Public Service Company*, 314 U. S. 498, 508, it is clear that in transporting Texas gas from Littleton, Colorado, and selling it at various "city gates" in Colorado for resale, petitioner "engages in interstate commerce in gas and in its interstate transportation" within the meaning of the Natural Gas Act. In the *Illinois* case, the company's facilities were located wholly within the State of Illinois and it there purchased gas which had been brought into the state from Texas and Oklahoma. The company transported such gas to various "city gates" in Illinois, where it was sold to distributing companies for resale. Here, as in that case, petitioner "makes the first sale to distributors for resale to which the Act in terms applies."

that the Act vests the Commission with administrative discretion in the matter of allocation and that since the Commission's allocation of cost of service was supported by substantial evidence and was "a working one suitably adapted to the particular circumstances", it was properly affirmed by the court below (R. II, 1113).

I

THE COMMISSION HAS ADMINISTRATIVE DISCRETION TO ADOPT ANY METHOD OF ALLOCATION WHICH IS REASONABLE AND APPROPRIATE

The Natural Gas Act does not prescribe any method of allocation.[4] Congress thus left the matter of allocation to the expert judgment of the Commission, subject to judicial review in the event of an abuse of its administrative discretion in this regard.

The sole purpose of an allocation between the regulable and non-regulable sales of a natural-gas company is to aid the Commission in its determination of the reasonableness of the return which the company is receiving from its regulated sales and to enable the court on review to determine whether a prescribed reduction in such rates violates any constitutional standards. In reviewing such orders this Court has not undertaken to prescribe any particular formula or method of

[4] Nor does the Act by its terms require that a formal allocation of any kind be made. This question is discussed in greater detail in our brief in No. 296, this Term.

allocation. As Mr. Justice Brandeis, for the Court, observed in *Groesbeck* v. *Duluth, S. S. & A. Ry. Co.*, 250 U. S. 607, 614, "it is much easier to reject formulas presented as being misleading than to find one apparently adequate." He also noted (at p. 615) that the determination of the formula to be adopted in a particular case "presents a question, not of law, but of fact," and as Mr. Justice Douglas, for the Court, said in the recent case of *Butler Brothers* v. *McColgan*, 315 U. S. 501, 507, "one who attacks a formula of apportionment carries a distinct burden of showing by 'clear and cogent evidence' that it results in extraterritorial values being taxed."

The decisions of this Court in the *Minnesota Rate Cases*, 230 U. S. 352, and in *Smith* v. *Illinois Bell Telephone Company*, 282 U. S. 133, do not support petitioner's contention that the Commission, as a matter of law, had to make an allocation of its physical properties (Pet. Br. 30). In those cases, State agencies were undertaking to regulate the intrastate rates of utilities which were also engaged in interstate operations, the latter being constitutionally immune from State regulation. The regulation of the interstate wholesale rates of natural gas companies under the Natural Gas Act does not present such a constitutional problem, since Congress, if it so desired, could regulate the intrastate rates of such companies which "affect" their interstate rates and operations. In any event, an allocation of

properties is merely a step in the determination of the costs (including return) properly allocable to the several classes of service of a company. As the Commission here observed, "all that can be accomplished by an allocation of physical properties can be attained by allocating costs including return." (R. I, 80). It is thus apparent that the Commission is not precluded by the Constitution, the Act or the prior decisions of this Court, from making a proper allocation of costs, including return, without first taking the preliminary step of allocating the physical property.

II

THE COMMISSION'S ALLOCATION OF COST OF SERVICE WAS REASONABLE AND APPROPRIATE

In arriving at the amount of the ordered reduction in petitioner's interstate wholesale rates, the Commission made an allocation of the cost of service, including in such cost the fair return on the rate base, and separately determined the excess of revenues over costs for direct industrial sales and sales for resale (R. I, 79–84). In making such allocation of costs, the Commission adopted the so-called "demand and commodity" method,[5] which had been presented by its staff witness Lyon, a gas engineer of wide experience

[5] See *Arkansas-Louisiana Gas Company* v. *City of Texarkana*, 17 F. Supp. 447, affirmed, 96 F. (2d) 179 (C. C. A. 8), certiorari denied, 305 U. S. 606.

(R. II, 711–716, 721–727; R. III, Exh. 227). We submit that the Commission's action in this regard was an appropriate and reasonable exercise of its administrative discretion in the circumstances.

The amount of gas revenues which petitioner derived from each of its customers was definitely known and undisputed. Accordingly, the only problem involved in a determination of the reasonableness of petitioner's interstate wholesale rates was to arrive at the portion of petitioner's operating expenses, including depreciation and taxes, which was properly allocable to the interstate-wholesale customers. In order to determine the amount of excess revenues being derived from the interstate-wholesale customers, it was only necessary to add a fair return of 6½% to the amount of expenses allocated to them, and deduct the sum from the total revenues derived from them. The Commission ordered petitioner to reduce its rates to such customers accordingly (R. I, 83, 96).[8]

[8] Although the Commission ordered a reduction in petitioner's interstate wholesale rates by $119,000 per year (R. I, 96), the net cost of such rate reduction to petitioner was $21,000, inasmuch as the $119,000 reflected an ordered reduction of $98,000 per annum in petitioner's cost of gas purchased from Colorado Company (R. I, 83). The Commission's order reducing the rates charged by Colorado Company to petitioner is now under review in No. 379, this Term.

The allocation of cost of service, including return, presented by the staff engineer and adopted by the Commission may be briefly summarized.

The total cost of service included all costs allowed by the Commission, i. e., all operating expenses, taxes, depreciation and a return of 6½% on the rate base.[7] Such total cost was separated into three classes, namely, "volumetric", "capacity" and "distribution" costs (R. III, Ex. 227; R. I, 80).[8] Petitioner's volumetric costs were allocated to the customers on an annual Mcf basis, i. e., in the ratio that the sales to each customer in the test year, 1939, bore to the total sales to all customers in that year. Petitioner's capacity costs were allocated to the customers in the ratio that the Mcf sales to each customer on the peak day of Febru-

[7] The total cost of service found by the Commission was $670,000, or $70,500 per year more than that used by Commission witness Lyon (R. I, 83; R. III, Ex. 227). This increase consisted of additional allowances made by the Commission over those used by the Commission engineer, viz: (1) cost of gas purchased by petitioner from Colorado Company, $41,700, (2) rate case expense, $17,500, (3) depreciation, $300, and (4) return on rate base $11,000. (These adjustments are tabulated in Sch. 1 of Appendix B, *infra*.)

[8] The Commission characterized the "volumetric" or "commodity" costs as "variable costs * * * that vary proportionally to output or volume of sale". It characterized the "capacity" or "demand" costs as "fixed costs * * * which do not vary with volume of sales". (R. I, 80).

ary 9, 1939, bore to the total sales to all customers on that day (R. I, 80, 82–83).[2] The distribution costs consist of two general classes: (1) depreciation, taxes, maintenance and return on investment, in metering and regulating equipment through which gas is delivered at individual stations to each customer, and (2) operating and general expenses incurred in operation of such metering and regulating stations. The first group of costs was allocated to each customer in the ratio which the investment for each customer bore to the total investment in such facilities to serve all customers. The second group was allocated on the basis of the number of stations (R. III, Ex. 227, Table 7).

The transmission costs of petitioner ($245,209) were separated between volumetric costs ($75,693) and capacity costs ($169,516). See Sch. 2 and 4 of Appendix B, *infra*.) Briefly stated, all transmission costs were classified as capacity costs with the exception of compressing station fuel, supplies and expenses, maintenance and annual depreciation of compressing station equipment, costs which were classed as volumetric. Moreover, the annual return and income taxes on the transmission plant, as well as compressing station

[2] As stated in the Commission's opinion (R. I, 82–83), this was a deviation from the method of the Commission engineer, who had allocated the capacity costs to resale domestic and commercial gas as one class, and industrial gas, both direct and resale, as a separate class (R. III, Ex. 227; R. II, 748–749).

operating labor, were considered 50% volumetric and 50% capacity costs (R. III, Ex. 227, Table 6. See also Sch. 4 of Appendix B, *infra*).

It is thus clear that, contrary to petitioner's contention (Pet. Br. 27), the Commission did not combine petitioner's costs with those of Canadian Company and Colorado Company, but treated petitioner's system as a separate unit.

The record also does not support petitioner's contention that the entire capacity of the system is required to satisfy the peak-day demands of domestic consumers (Pet. Br. 18, 35-36). Instead, the evidence shows that petitioner's system has a capacity substantially in excess of that required to meet the demands of domestic consumers. Petitioner's deliveries on December 13, 1940, the highest peak day of record, totaled 14,026 Mcf. (at 14.65 lbs. pressure), of which 10,098 Mcf or 72% was sold to resale customers and 3,928 Mcf or 28% to direct industrial customers (R. I, 187; see Pet. Br. Appendix D, pp. 27-a–28-a). Since a portion of the resale gas is also sold for industrial use, it is evident that on the highest peak day in petitioner's history more than 28% of the system capacity was used by industrial customers.[19] In the light of these facts, petitioner

[19] Moreover, petitioner's witness Hancock testified that in 1941 the system capacity would be increased to from 15,000 Mcf to 21,200 Mcf per day by the installation of an additional compressor unit at the Arapahoe station (R. I, 143–144), the cost of which was included by the Commission in the rate base (R. I, 67).

is not in a position to complain, since the Commission allocated only 16.5% of the capacity costs to its direct (non-regulable) sales.

This is also true of petitioner's objection (Pet. Br. 18–19, 36) to the Commission's allocation of the capacity costs on the basis of deliveries to customers on February 9, 1939. The demands of the domestic and commercial consumers were higher on that day than on any other in the test year 1939 (R. II, 750–751, 760–761). As indicated in petitioner's brief (Appendix D, p. 28–a), there were two other days in 1939 on which petitioner's total deliveries were greater than on February 9. However, it is the *ratio* of deliveries to the regulable and non-regulable customers, rather than the total deliveries, that determines the allocation of capacity costs.[11] Significantly, petitioner does not state to what extent, if at all, it was prejudiced by the Commission's use of the ratio of the deliveries on February 9, 1939, nor does the record disclose the ratio of deliveries between the classes of cus-

[11] Commission engineer Lyon testified "* * * we are determining a percentage of distribution of capacity of the two classes of service." (R. II, 760.) On February 9, 1939, the deliveries to petitioner's resale customers amounted to 83.5% of the total deliveries, and to the direct-sale customers 16.5%. Accordingly, the capacity costs were allocated in the same ratio (R. I, 82–83; Appendix B, Sch. 2, *infra*). Deliveries to direct-sale and resale customers on February 9, 1939, are incorrectly shown in petitioner's brief as 522 Mcf and 11,034 Mcf, respectively (Pet. Br. Appendix D, p. 27–a). The record shows that the deliveries to such customers on that day were 1,777 Mcf and 9,009 Mcf, respectively (R. III, Exh. 227, Table 2).

tomers on any other day in the test year. Presumably, petitioner would have presented such evidence had it been to its advantage to do so. Finally, it was appropriate to use the peak day in 1939 rather than any of petitioner's suggested peak days in 1938 or 1940 for purposes of allocating costs incurred in the test year 1939 (Pet. Br. Appendix D, pp. 27–a, 28–a).

Petitioner further contends (Pet. Br. 19–20, 36) that the Commission did not allocate the capacity costs in proportion to the actual sales for resale and direct sales of 83.5% and 16.5%, respectively, of the peak deliveries. In fact, as stated in the Commission's opinion (R. I, 82–83), the "coincident demands of all customers on the peak day" were used. Accordingly, precisely 83.5% of the capacity costs were allocated to the sales for resale and 16.5% to the direct sales (see Appendix B, *infra,* Schedule 2, Cols. 3 and 6).

There is likewise no merit to petitioner's contention that the Commission's allocation consisted of "guesses, estimates and purported averages" (Pet. Br. 36). These allegations apparently are directed against the breakdown made by the Commission's engineer of total resale deliveries into estimated domestic and commercial sales on the one hand and industrial sales on the other (Pet. Br. 21). These estimates were not refuted by any evidence. Moreover, they were not used by the Commission, since its allocation was made between resale customers as a class and the direct-sale customers as another class (R. I, 82–83;

Appendix B, Schedule 2, Cols. 3 and 6, *infra*). And the Commission did not fix rates separately for resale domestic, commercial and industrial gas, but ordered a reduction in petitioner's interstate wholesale rates in the aggregate amount of $119,000 (R. I, 96). The further step of prescribing specific rate schedules is yet to be taken. See *Federal Power Commission* v. *Natural Gas Pipeline Co.*, 315 U. S. 575, 584–585.

Petitioner's contention respecting the Commission's treatment of the peak-day deliveries to Colorado Portland Cement Company, a direct sale customer, is without substance (Pet. Br. 20–21, 36–37). As stated in the Commission's opinion (R. I, 82), the Cement Company is regularly curtailed on peak days, and since its demand was zero on the peak day, it is apparent that none of the capacity costs were allocated to this customer under the Commission's method (R. I, 82; R. III, Exh. 227, Table 2, Col. 9, line 7). Surely, petitioner cannot be heard to complain that no capacity costs were allocated to this company, which is petitioner's largest direct industrial customer, purchasing 30% of petitioner's gas.

Petitioner urges that the Commission's segregation of costs as between "volumetric" and "capacity" costs was purely "arbitrary" and "fortuitous" (Pet. Br. 21–23, 37). The fact remains that the problem of apportioning costs between "volumetric" and "capacity" calls for the exercise of expert judgment. The Commission's segregation of such costs was supported by the evidence pre-

sented by its engineer and has a rational basis (R. II, 744; R. III, Exh. 227, Table 6). The reasonableness of the Commission's method, as tested by the end result, is apparent from the fact that only 30.9% of the total cost of service (including annual return) was allocated to the direct-sale customers (non-regulable) which purchased 48.7% of petitioner's gas in the test year. This resulted in a cost of service for the direct-sale gas of 14.9¢ per Mcf as compared with 31.5¢ per Mcf for the resale gas (see Schedule 2 of Appendix B, *infra*).

Finally, petitioner states that the Commission failed to make appropriate findings with respect to its allocation (Pet. Br. 41–43). As appears from its Opinion (R. I, 79–83), the Commission adopted the method presented by its staff engineer "with the modification that the coincident demands of all customers on the system peak day are used, and with [the] exception of deliveries to Highway Gas Company" (R. I, 82–83).[12] Starting with its revised and total cost of service, the application of the staff's allocation, as thus modified, to such total cost of service was merely a mathematical calculation (see Appendix B, *infra*).

We accordingly submit that the allocation made by the Commission is based upon competent evi-

[12] With respect to Highway Gas Company, the Commission stated (R. I, 83) that the deliveries to that company "are for all practical purposes an exchange of gas with Goodstein Pipeline Company. The total amount of revenue involved is less than $700 per year. In view of these facts no attempt was made to make a special cost study and costs have been assumed to equal revenues."

dence and has a rational basis. Neither the Act nor the Constitution requires more.

CONCLUSION

For the reasons stated, it is respectfully submitted that the decision below should be affirmed.

CHARLES FAHY,
Solicitor General.
FRANCIS M. SHEA,
Assistant Attorney General.
CHESTER T. LANE,
DAVID L. KREEGER,
Special Assistants to the Attorney General.
PAUL A. SWEENEY,
Attorney.

For Federal Power Commission:
CHARLES V. SHANNON,
General Counsel.
HARRY S. LITTMAN,
Assistant General Counsel.
STANLEY M. MORLEY,
Attorney.

For Wyoming Public Service Commission:
LOUIS J. O'MARR,
Attorney General,
State of Wyoming.

JANUARY 1945

APPENDIX A

The pertinent provisions of the Natural Gas Act of 1938, c. 556, 52 Stat. 821 (15 U. S. C. § 717 *et seq.*) are as follows:

SECTION 1. (a) As disclosed in reports of the Federal Trade Commission made pursuant to Senate Resolution 83 (Seventieth Congress, first session) and other reports made pursuant to the authority of Congress, it is hereby declared that the business of transporting and selling natural gas for ultimate distribution to the public is affected with a public interest, and that Federal regulation in matters relating to the transportation of natural gas and the sale thereof in interstate and foreign commerce is necessary in the public interest.

(b) The provisions of this act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas.

SEC. 5. (a) Whenever the Commission, after a hearing had upon its own motion or upon complaint of any State, munici-

pality, State commission, or gas distributing company, shall find that any rate, charge, or classification demanded, observed, charged, or collected by any natural-gas company in connection with any transportation or sale of natural gas, subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory, or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order: *Provided, however,* That the Commission shall have no power to order any increase in any rate contained in the currently effective schedule of such natural gas company on file with the Commission, unless such increase is in accordance with a new schedule filed by such natural gas company; but the Commission may order a decrease where existing rates are unjust, unduly discriminatory, preferential, otherwise unlawful, or are not the lowest reasonable rates.

SEC. 19. (b) Any party to a proceeding under this act aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the circuit court of appeals of the United States for any circuit wherein the natural-gas company to which the order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the order of the Commission upon the application for rehearing, a written petition

praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall forthwith be served upon any member of the Commission and thereupon the Commission shall certify and file with the court a transcript of the record upon which the order complained of was entered. Upon the filing of such transcript such court shall have exclusive jurisdiction to affirm, modify, or set aside such order in whole or in part. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission in the application for rehearing unless there is reasonable ground for failure so to do. The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceedings before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and it shal file with the court such modified or new findings, which if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order.

The judgment and decree of the court, affirming, modifying, or setting aside, in whole or in part, any such order of the Commission, shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

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APPENDIX B

SCHEDULE 1

Colorado-Wyoming Gas Company

Total Cost of Service as Adjusted by the Commission

Line	Description (1)	Staff Ex. 227 (2)	Commission Adjustments (3)	Adjusted (4)
1	Gas Purchased for Resale	$358,385	$41,718	$400,103
2	Operating Expenses			
3	Transmission)			
4	Distribution)	$ 41,091		$ 41,091
5	Administrative and General	26,773	17,500 1/	44,273
6	Total	$ 67,864	$17,500	$ 85,364
7	Depreciation			
8	Transmission	$ 35,364	$ 314	$ 35,678
9	Distribution	1,501		1,501
10	General	1,101		1,101
11	Total	$ 37,966	$ 314	$ 38,280
12	Taxes	$ 57,106	-	$ 57,106
13	Return on Plant in Service			
14	Transmission	$ 74,905	$10,189	$ 85,094
15	Distribution	2,093	142	2,235
16	General	380	26	406
17	Total	$ 77,378	$10,357	$ 87,735
18	Return on Working Capital	$ 454	$ 601	$ 1,055
19	Total Cost of Service	$599,153	$70,490	$669,643

1/ Additional administrative and general expense (rate case expense) was allocated to transmission and distribution on basis of direct expense as follows:

	Base	%	Allocation
Transmission	$32,146	78.23	$13,690
Distribution	8,945	21.77	3,810
	$41,091	100.00	$17,500

APPENDIX B.

SCHEDULE 2
COLORADO-WYOMING GAS COMPANY
ALLOCATED COST OF SERVICE AS ADJUSTED BY THE COMMISSION

Line No.	Description	Total Annual Volumes (Mcf)1/	Peak Day Volumes (Mcf)1/	Cost of Gas Purchased For Sale	Transmission Costs: Volumetric Costs	Transmission Costs: Capacity Costs	Transmission Costs: Total	Distribution Costs	Total Costs	Total Cost As Rounded Out by the Commission	Total Cost per Mcf	Revenue As Rounded Out by the Commission	Excess of Revenue Over Cost
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
1	Direct Sales												
2	Sales to Industrial Customers	1,366,728	1,784	$130,999	$36,212	$ 26,781	$ 62,993	$ 7,956	$201,948	$201,000	14.7¢	$236,000	$ 35,000
3	Sales to U. S. War Dept.	23,127	73	3,484	613	1,147	1,760	1,660	6,973	6,000	25.9¢	11,000	5,000
4	Total Direct Sales	1,389,855	1,777	134,483	36,825	27,928	64,753	9,616	208,921	207,000	14.9¢	247,000	40,000
5	Per Cent of Grand Total	48.7	16.5	33.6	48.7	16.5	26.4	39.6	31.2	30.9	-	29.8	25.2
6	Sales for Resale												
7	Cheyenne Light, Fuel & Power Co.	414,807	2,508	71,650	10,990	39,338	50,328	1,255	123,233	124,000	29.9¢	182,000	58,000
8	Greeley Gas & Fuel Co.	147,406	840	24,544	3,906	13,202	17,108	1,079	42,731	44,000	29.8¢	64,000	20,000
9	Highway Gas Co.	4,649	19	611	123	299	422	100	1,136	700	15.1¢	700	-
10	Public Service Co. of Colorado2/	900,114	5,647	168,872	25,849	86,746	112,595	12,272	293,742	294,000	32.7¢	335,000	41,000
11	Total Sales for Resale	1,466,976	9,008	$265,677	$38,868	$141,588	$180,456	$14,706	$460,839	$462,700	31.5¢	$581,700	$119,000
12	Per Cent of Grand Total	51.3	83.5	66.4	51.3	83.5	73.6	60.4	68.8	69.1	-	70.2	74.8
13	Grand Total	2,856,831	10,786	$400,160	$75,693	$169,516	$245,209	$24,331	$669,843	$669,700	23.4¢	$828,700	$159,000

1/ Volumes are Mcf at pressure base of 14.65 pounds per square inch absolute.

2/ Includes gas sold in test year to residential right-of-way and commercial customers directly by Colorado-Wyoming Gas Company, and now sold to Public Service Co. of Colorado for resale.

APPENDIX B

SCHEDULE 3

Colorado-Wyoming Gas Company

Cost of Gas Purchased for Sale as Adjusted by the Commission

Line	Description	Volume (Mcf) 1/	Costs Per Staff Ex. 227	Commission Adjustments 2/	As Adjusted by Commission
	(1)	(2)	(3)	(4)	(5)
1	Purchases from Colorado Interstate Gas Company				
2	Volumetric Costs	2,[illegible],763	$158,113	$17,603	$175,716
3	Capacity Costs				
4	Domestic, Commercial and Lost Gas		106,558	12,888	119,420
5	Industrial		91,155	11,006	102,161
6	Total Capacity Costs		$197,667	$23,914	$221,581
7	Distribution Costs		1,872	200	2,072 3/
8	Total Cost of Gas Purchased from Colorado Company	2,[illegible],763	$357,652	$41,717	$399,369
9	Less Gas Used in Operations	(30,893)	(4,373	-	(4,373
10	Total Cost of Gas Purchased from Colorado Company for Sale	2,853,870	$353,279	$41,717	$394,996
11	Purchases from Goodwell Pipe Line Company	47,878	4,788	-	4,788
12	Purchases from Ed Vosher	3,191	319	-	319
13	Less System Leakage and Unaccounted-for Gas	(48,108)	-	-	-
14	Total Gas Purchase for Sale	2,856,831	$358,386	$41,717	$400,103
15	Recapitulation of Cost of Gas Purchased for Sale				
16	Volumetric Costs				$176,450
17	Capacity Costs				
18	Domestic, Commercial and Lost Gas				120,537
19	Industrial				103,116
20	Total				$400,103 3/

1/ Volumes are in Mcf at pressure base of 14.65 pounds per square inch absolute.
2/ Commission adjustments were distributed on the basis used in Staff Exhibit [illegible].
3/ Allocation of cost of gas purchased for sale.

Customer	Volumetric Costs	Capacity Costs	Total Cost
Direct Sales			
Industrial customers	$ 84,116	$46,583	$130,699
U.S. War Dept.	1,628	1,996	3,624
Total	$ 85,744	$48,579	$134,323
Sales for Resale			
Cheyenne L.P.&P.Co.	$ 25,620	$46,030	$ 71,650
Greeley G.&E. Co.	9,104	15,440	24,544
Highway Gas Co.	282	327	614
Public Ser.Co.of Colo.	55,595	113,277	168,872
Total	$ 90,606	$175,074	$265,680
Grand Total	$176,450	$223,653	$400,103

APPENDIX B

SCHEDULE 4

COLORADO-WYOMING GAS COMPANY

TRANSMISSION AND DISTRIBUTION COSTS AS ADJUSTED BY THE COMMISSION

Line	Description (1)	Transmission Costs: Total Costs (2)	Volumetric Costs (3)	Capacity Costs (4)
1	Total Cost as per Staff Exhibit #227 - Table No. 6	$220,520	$70,599	$149,921
2	Commission Adjustments as Allocated			
3	Proportion of General Expenses	13,690		13,690
4	Annual Accruals for Depreciation of Transmission Plant	314		314
5	Return on Transmission Plant	10,189	5,094	5,095
6	Proportion of Return on General and Intangible Plant	26		26
7	Return on Working Capital	470		470
8	Adjusted Transmission Costs	$245,209	$75,693	$169,516

Line	Description (1)	Distribution Costs: Total Costs (2)	Allocated Equally Per Customer (3)	Allocated on Basis of Adjusted Book Cost of Plant (4)
1	Total Cost as per Staff Exhibit #227 - Table No. 7	$ 20,248	$13,624	$ 6,624
2	Commission Adjustments as Allocated			
3	Proportion of General Expenses	3,810	3,508	302
4	Return on Distribution Plant	142		142
5	Return on Working Capital	131		131
6	Adjusted Distribution Costs	$ 24,331	$17,132	$ 7,199

SUPREME COURT OF THE UNITED STATES.

No. 575.—October Term, 1944.

Colorado-Wyoming Gas Company, Petitioner, *vs.* Federal Power Commission, Colorado Interstate Gas Company, City & County of Denver, Colorado, et al.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Tenth Circuit.

[April 2, 1945.]

Mr. Justice Douglas delivered the opinion of the Court.

This case is a companion case to *Colorado Interstate Gas Co.* v. *Federal Power Commission*, No. 379, and *Canadian River Gas Co.* v. *Federal Power Commission*, No. 380, decided this day. Petitioner began operations in 1925. Until 1929 petitioner obtained its entire supply from the Wellington Field of the Continental Oil Co., near Ft. Collins, Colorado. Its transmission line ran from that point north to Cheyenne, Wyoming. The Wellington Field began to diminish. So petitioner, in October, 1929, entered into a twenty-year contract with Colorado Interstate to purchase gas from it, the gas to be delivered to petitioner at its metering station near Littleton, Colorado. Accordingly, in 1929 and 1930 petitioner constructed a pipe line between Ft. Collins, Colorado and Littleton, Colorado, where connection was made with Colorado Interstate's transmission system. Between 1929 and 1939 branch lines were constructed to serve various cities, towns, and industrial customers in Colorado. At the present time all but two per cent of its gas is obtained from Colorado Interstate. Petitioner sells gas at the Cheyenne city gate to its affiliate Cheyenne Light, Fuel and Power Co. It also sells directly to industrial consumers in Colorado and to some extent in Wyoming. And it sells gas at various city gates in Colorado for resale.

The investigation and hearings on the interstate wholesale rates of Canadian, Colorado Interstate and petitioner were consolidated. As we have seen the Commission ordered Canadian to reduce its rate by $561,000 per year. That amount made up part of the

$2,065,000 annual reduction which the Commission ordered in the rates of Colorado Interstate. In the present case the Commission found that petitioner's revenues were $159,000 in excess of costs and a fair return and that $119,000 of that excess were allocable to petitioner's sales for resale. The Commission ordered petitioner to reduce its wholesale rates by $119,000 a year (43 P. U. R. (N. S.) 205, 234). That does not represent the net decrease in revenue, since the Commission ordered Colorado Interstate to reduce its rates to petitioner by $98,000 a year. Accordingly, the net decrease in revenues of petitioner will be $21,000 if the Commission's order stands. The petition for certiorari, which we granted to review the judgment of the Circuit Court of Appeals affirming the order of the Commission (142 F. 2d 943) was limited to the question whether the allocation of cost of service used by the Commission is without support in the record and contrary to law.

The Commission in this case as in *Colorado Interstate Gas Co.* v. *Federal Power Commission* and *Canadian River Gas Co.* v. *Federal Power Commission* did not make a separation of properties used in the regulated business from those used in the unregulated. It used instead the same method of allocation of costs as it did in those other cases. Petitioner contends that the Commission's method of allocation of costs included in the regulated business a part of its business which Congress has not subjected to regulation by the Commission. As we have noted, petitioner's transmission line commences in Colorado near Littleton where it connects with the pipeline of Colorado Interstate. Petitioner sells some of its gas in Colorado for resale to domestic users in certain towns in Colorado. The Commission held that those wholesale sales were subject to its jurisdiction. Petitioner contends that those sales are made in intrastate commerce and are not subject to the Commission's rate making powers. Its position is that the one and only sale for resale by it in interstate commerce is the sale at the city gate in Cheyenne, since none of the Colorado sales involve interstate commerce so far as petitioner is concerned.

The answer turns on the meaning of § 1 (b) of the Act (52 Stat. 821, 15 U. S. C. § 717) which provides:

"(b) The provisions of this chapter shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other

use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas."

The Commission relied on *Illinois Gas Co.* v. *Public Service Co.*, 314 U. S. 498, in concluding that it had jurisdiction over the wholesale sales in Colorado. That case presented the question whether the Illinois Commission or the Federal Power Commission had authority to authorize a pipeline extension wholly within Illinois. The company proposing the extension (Illinois Gas Co.) owned a pipeline system wholly in Illinois which was connected at various points in that State with the pipeline of its parent company, Panhandle Eastern Pipe Line Co., which owned and operated a natural gas pipeline system from gas fields in Texas, Kansas and Oklahoma across Illinois and into Indiana. The Illinois company purchased its gas under a long term contract from Panhandle Eastern and transported it through its own lines to local gas distributing utilities in Illinois to which it sold the gas for distribution to consumers in various Illinois cities. We held that the Illinois company by virtue of § 7(c) of the Act[1] could build an extension to connect with the facilities of a company distributing gas to consumers in Illinois only after obtaining a certificate of public convenience and necessity from the Federal Power Commission. We held that the Illinois company and Panhandle Eastern were engaged "in interstate commerce in the purchase and sale of the natural gas which moves in a continuous stream from points without the state" into the pipes of the Illinois company; and that "the particular point at which the title and custody of the gas pass to the purchaser; without arresting its movement to the intended destination, does not affect

[1] Sec. 7(c) provides in part:

"No natural-gas company shall undertake the construction or extension of any facilities for the transportation of natural gas to a market in which natural gas is already being served by another natural-gas company; or acquire or operate any such facilities or extensions thereof, or engage in transportation by means of any new or additional facilities, or sell natural gas in any such market, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity require or will require such new construction or operation of any such facilities or extensions thereof: . . . ."

A natural-gas company is defined in § 2(6) as a "person engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale."

the essential interstate nature of the business." 314 U. S. pp. 503, 504. We pointed out that the purpose of the Act was to provide "an agency for regulating the wholesale distribution to public service companies of natural gas moving interstate, which this Court had declared to be interstate commerce not subject to certain types of state regulation." *Id.*, p. 506. We reviewed the earlier decisions of the Court which adopted the mechanical test for determining when interstate commerce ends and intrastate commerce begins, viz., when the gas is introduced into the service pipes of the local distributor. We noted that it was to fit the pattern of state regulation reflected in those decisions that the Natural Gas Act was passed.

Accordingly, we conclude that if petitioner's pipeline were to be constructed today from Littleton, Colorado to the city gates of the Colorado towns where petitioner's gas is resold, § 7(c) would require that a certificate of public convenience and necessity be obtained from the Commission. For in this case as in *Illinois Gas Co.* v. *Public Service Co.*, *supra*, the gas which petitioner purchases from Colorado Interstate moves in a continuous stream across state lines to local distributing companies in Colorado as well as Wyoming. If petitioner is engaged in "the transportation of natural gas in interstate commerce" to those Colorado towns within the meaning of § 1(b), its wholesale sales in Colorado are also sales "in interstate commerce of natural gas for resale for ultimate public consumption" as those words are used in § 1(b). That commerce does not end until the gas enters the service pipes of the distributing companies.

Most of the other objections which petitioner raises to the Commission's method of allocation of costs have been considered in the cases of *Colorado Interstate Gas Co.* v. *Federal Power Commission* and *Canadian River Gas Co.* v. *Federal Power Commission*. We need not repeat what we said there. But there are a few distinct phases of this case which must be separately stated.

Petitioner says that the Commission treated it along with Canadian and Colorado Interstate as an integrated unit for purposes of the allocation of costs. The inference is that the Commission combined petitioner's costs with those of the other two companies and allocated the combined costs three ways. That is not the fact. Petitioner is independent in management and control from the other two. Its system was not constructed as part

of Canadian's and Colorado Interstate's system but was started independently and connected with the others at a later stage. The Commission recognized that in operation the three company project was a single one in the sense that an alteration in Canadian's rates affected the reasonableness of the rates of Colorado Interstate and in turn the reasonableness of the rates of petitioner. But when it came to an allocation of costs among petitioner's classes of business the Commission considered petitioner's costs alone.

Here as in the cases of Canadian and Colorado Interstate the findings of the Commission leave much to be desired. The findings are general and incorporate by reference the staff exhibits, on which reliance is put for the subsidiary findings. But in this case there are added difficulties. The staff used one system, the Commission another. As the Commission said the staff "departed from the use of the system peak day for allocating demand (fixed) costs and combined the separate class peaks of resale customers and of main line industrial customers." 43 P. U. R. (N. S.) p. 233. The Commission thought a different method would be in keeping with petitioner's operations. It said: "The Colorado Portland Cement Company, the principal main line industrial user, is curtailed regularly during system peak days. Its demand on the system peak day is, in our opinion, a proper measure of its proportionate share of demand costs than its highest off-peak demand. Accordingly, the principles and methods of cost allocation presented by Commission staff are adopted with the modification that the coincident demands of all customers on the system peak day are used, and with exception of deliveries to Highway Gas Company." 43 P. U. R. (N. S.) p. 234. When we read that finding against the record there are ambiguities which we are unable to resolve were it our province to do so.

(1) The "system peak day" is February 9, 1939—the same day chosen for Canadian and Colorado Interstate. We know from our search of the record that is not the actual peak day in 1939 for petitioner's business. We are told by the Commission in its brief that it is the ratio of deliveries to the regulable and non-regulable customers rather than total deliveries that determines the allocation of capacity costs. But there are no findings which indicate why the system peak day for other companies should be taken as the system peak day for this company. Nor are there any findings which indicate that the ratio on the system

peak day is a more reliable guide in the allocation of costs than the ratio on the actual peak day of this company.

(2) The Commission says it allocated capacity costs on the basis of the "coincident demands of all customers on the system peak day." It said that Colorado Portland Cement Co. is "curtailed regularly during system peak days" and that its "demand" on that day is the proper measure of its proportionate share of capacity costs. We assume it meant by "coincident demands" on the system peak day, the amount of gas actually delivered on that day, not the customers' respective needs for gas on that day. But when we turn to the record there are ambiguities. The staff exhibit on which the Commission apparently relied designates as one classification the "maximum day deliveries on Colorado Interstate Gas Co. peak day—Thurs., Feb. 9, 1939." Under that heading we compute 1,777 Mcf. to direct-sale customers and 9,009 Mcf. to resale customers on February 9, 1939. The Commission in its brief tells us that that was the basis on which it allocated capacity costs, viz. 83.5 per cent to the resale gas, 16.5 per cent to the direct sale gas. But there is evidence in the record that the direct-sale customers received on February 9, 1939 not 1,777 Mcf. but only 522 Mcf. If we use 522 Mcf. rather than 1,777 Mcf. in our computations we shift to the interstate wholesale sales almost $21,000 additional costs. Now the net rate decrease ordered by the Commission in this case amounted to $21,000. Hence that net decrease substantially disappears if we take 522 Mcf. rather than 1,777 Mcf. as the amount of direct sales on Feb. 9, 1939. The choice of the lower figure would thus be fatal to the Commission's case.

We do not know why the lower figure was rejected. There are no findings to guide us. In the record there is testimony which may suffice as a partial reconciliation of the difference and which casts some doubts on the accuracy of the lower figure. But we have been unable completely to reconcile the difference. We do know from a reading of the record that the staff exhibit from which the 1,777 Mcf. item was obtained was based at least in part on averages or estimates not on actual deliveries. It is not clear whether 1,777 Mcf. rested on estimates or reflected actual deliveries by petitioner on Feb. 9, 1939. The caption "maximum day deliveries on Colorado Interstate Gas Co. peak day—Thurs., Feb. 9, 1939" is ambiguous. It may mean that the gas delivered to petitioner by Colorado Interstate on that day was apportioned among the several classes of customers according to their actual

use on that day. It may mean actual deliveries by petitioner during that day. The figures may or may not be the same.

The review which Congress has provided for these rate orders is limited. Sec. 19(b) says that the "finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive." But we must first know what the "finding" is before we can give it that conclusive weight. We have repeatedly emphasized the need for clarity and completeness in the basic or essential findings on which administrative orders rest. *Florida* v. *United States*, 282 U. S. 194, 215; *United States* v. *Baltimore & Ohio R. Co.*, 293 U. S. 454, 464; *United States* v. *Chicago, M. St. P. & P. R. Co.*, 294 U. S. 499, 504-505, 510-511; *United States* v. *Carolina Carriers Corp.*, 315 U. S. 475, 488-489. Their absence can only clog the administrative function and add to the delays in rate-making. We cannot dispense with them for Congress has provided the standards for judicial review under this Act, § 19(b). The courts cannot perform the function which Congress assigned to them in absence of adequate findings. Nor are they authorized under § 19(b) to make findings and substitute them for those of the Commission.

We think it is plain that $98,000 of the rate decrease ordered by the Commission in this case is valid since it reflects the reduction in the rates of Colorado Interstate from whom petitioner purchases practically all of its gas. But the balance of the $119,000 rate decrease which was ordered, viz. $21,000, is so shrouded in doubt that further findings by the Commission are necessary.

Accordingly, we affirm the judgment below insofar as it sustained the order of the Commission directing petitioner to reduce its rates by $98,000. As to the balance of the rate reduction, we reverse the judgment below, set aside the order of the Commission, and remand the cause for further proceedings in conformity with this opinion. See § 19(b).

It is so ordered.

THE CHIEF JUSTICE, MR. JUSTICE ROBERTS, MR. JUSTICE REED, and MR. JUSTICE FRANKFURTER are of the opinion that the case should be remanded to the Commission for separate allocation of investment and operating cost between the regulable and non-regulable properties as well as for the clarification of findings directed in the opinion. They agree that the deliveries to wholesalers in Colorado are in interstate commerce.